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Financing of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

Conditions of service for the ad litem judges of the International Tribunal for the Former Yugoslavia

Report of the Advisory Committee on Administrative and Budgetary Questions

1. The Advisory Committee on Administrative and Budgetary Questions has considered the report of the Secretary-General on the conditions of service of the ad litem judges of the International Tribunal for the Former Yugoslavia (A/55/756). The Advisory Committee has also considered the estimated additional requirements for the use of ad litem judges in the International Tribunal for the Former Yugoslavia as contained in document A/55/517/Add.1. In so doing, the Committee also made reference to the report of the Secretary-General on financing of the Tribunal (A/55/517 and Corr.1, annex IX). During its consideration of these matters, the Committee met with representatives of the Secretary-General.

I. Conditions of service

2. In its resolution 1329 (2000) of 30 November 2000, the Security Council decided to establish a pool of ad litem judges in the International Tribunal for the Former Yugoslavia and to enlarge the membership of the Appeals Chambers of both that Tribunal and the International Criminal Tribunal for Rwanda.

3. In this connection, in the same resolution, the Security Council also decided to amend articles 12, 13 and 14 of the statute of the International Tribunal for the Former Yugoslavia and articles 11, 12 and 13 of the statute of the International Criminal Tribunal for Rwanda (see annexes I and II to the resolution).

4. As indicated in the report of the Secretary-General on conditions of service of the ad litem judges of the International Tribunal for the Former Yugoslavia (A/55/756, paras. 5 and 9), the statute of the International Criminal Tribunal for Rwanda was not amended to include provision for utilization of ad litem judges, as the judges of that tribunal had not yet decided to support the appointment of ad litem judges.

5. The Advisory Committee notes that, under article 13 ter of the statute of the International Tribunal for the Former Yugoslavia, the General Assembly elects 27 ad litem judges for a term of four years. In accordance with paragraphs 1 (e) and 2 of article 13 ter, the ad litem judges are not eligible for re-election and are appointed by the Secretary-General, upon request of the President of the Tribunal, to serve in the Trial Chambers for one or more trials for a cumulative period of less than three years.

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6. Article 13 quater of the statute of the Tribunal indicates that, during the period in which the ad litem judges are appointed to serve in the Tribunal, they shall benefit from the same terms and conditions of service, mutatis mutandis, as the permanent judges of the International Tribunal. Article 13 bis states that the terms and conditions of service of the judges of the Tribunal are those of the judges of the International Court of Justice (see Security Council resolution 1329 (2000), annex I).

7. In his report, the Secretary-General stated that he would propose that the conditions of service approved by the General Assembly for the judges of the International Tribunals and the travel and subsistence regulations for those judges contained in his report on conditions of service of the judges of the International Tribunals (A/52/520, annex III) should be applied to the ad litem judges (A/55/756, para. 19). **The Advisory Committee points out that such a broad approach is not entirely consistent with the provision in article 13 quater of the statute of the Tribunal that the terms and conditions of service should be applied mutatis mutandis. The Committee has borne this important proviso in mind in its comments and recommendations in the paragraphs below. In particular, the Committee draws attention to the fact that judges of the International Court of Justice are elected for a term of nine years and may be re-elected, and judges of the Tribunals are elected for a term of four years and may be re-elected. On the other hand, the service of ad litem judges, as described in paragraph 5 above, is of a much more temporary nature and, as indicated below, could be intermittent. This essential difference has been taken into account by the Committee in evaluating the necessity of a number of the entitlements and allowances proposed in the report of the Secretary-General.**

8. According to the Secretary-General, the ad litem judges would receive an annual salary of $160,000, prorated for the length of service and with the application of the floor-ceiling measures (see A/55/756, para. 20 (a)). **The Advisory Committee has no objection to these proposals.** The Committee notes that if an ad litem judge is appointed to serve on more than one trial there is no requirement that the appointments be immediately consecutive and that there might be, and probably will be, breaks in service (see ibid., para. 17).

9. It is proposed (see ibid., para. 20 (b)) that the travel and subsistence regulations in effect for the judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda (see A/52/520, annex III) be applied to the ad litem judges. **The Advisory Committee agrees with this proposal.**

10. Permanent judges of the International Tribunals that maintain a bona fide residence at The Hague for at least three continuous years during their term of office are entitled to a lump-sum payment as a relocation allowance (see A/52/520, para. 19 (d)). It is proposed that by virtue of the limitation of their length of appointment, ad litem judges would not be eligible for payment of a relocation allowance (A/55/756, para. 24). **The Advisory Committee agrees with this approach.**

11. **The Advisory Committee believes that a similar approach should have been taken with regard to a number of other conditions of service, including the education allowance and the lump-sum survivor benefit (see ibid., paras. 20 (c) and (d)). Given the uncertainty as to the length of appointment and taking into account the probability of breaks in service (see para. 8 above), the Committee sees no need to apply either of these two conditions of service.**

12. **While the Advisory Committee is in broad agreement with the general conditions proposed by the Secretary-General (see ibid., para. 20 (e)), it is of the opinion that a requirement for actual residence at The Hague may be onerous. In this connection, the Committee points out that the Statute of the International Court of Justice, article 22, paragraph 2, requires only the President and the Registrar to reside at the seat of the Court. Consistent with article 23, paragraph 3, of that Statute, ad litem judges, in addition to the other conditions set forth in paragraph 20 (e) of the report of the Secretary-General, should be required to hold themselves at the disposal of the Court during the period of their appointment.**

13. The Advisory Committee notes that ad litem judges would not be entitled to pension benefits (see ibid., paras. 15, 21 and 22). In the event that recourse was made to the utilization of a judge who had previously retired from the International Tribunal for the Former Yugoslavia, the International Criminal

Tribunal for Rwanda or the International Court of Justice and was a recipient of a pension therefrom, the judge would not be entitled to continue to receive his or her pension during the time he or she served as an ad litem judge. Moreover, any period of service as an ad litem judge would not be counted towards nor added to the years of qualifying service that a retired judge might have with either of the International Tribunals or with the International Court of Justice. **The Committee agrees with these proposals.**

14. **In this connection, the Advisory Committee points out that the limitation of service to a cumulative period of less than three years (article 13 ter of the statute of the International Tribunal for the Former Yugoslavia) has the effect of preventing judges of the International Tribunals from reaching the three-year period of service after which they would be eligible for pension benefits. That having been said, the Committee considers that it is conceivable, although highly unlikely, that circumstances could lead to a trial lasting long enough that the service of an ad litem judge would exceed three years. To cover that eventuality, the letter of appointment should contain a proviso that, notwithstanding such a development, the consequential extension of service would not give rise to any additional entitlements or benefits other than those which already exist and which would be extended pro-rata by virtue of the extension of service.**

15. Concerning the establishment of disability benefits for ad litem judges (see ibid., para. 23), it is proposed that, should an ad litem judge be found unable to perform his or her duties because of illness or disability, he or she would be entitled to receive payment of his or her salary for the service period and that there would be no liability beyond that period. **The Advisory Committee recommends that disability payments be limited to injury or illness attributable to service with the Tribunal.**

II. Resource requirements

16. The financial implications of the introduction of ad litem judges are contained in documents A/55/517 and Corr.1, annex IX, and A/55/517/Add.1. For 2001 it is proposed that six ad litem judges work on two additional trial cases (A/55/517 and Corr.1, annex IX, para. 2). The additional trial cases would affect resources in areas related to trial activities and the operation of courtrooms. The costs relating to six ad litem judges for six months would amount to $5,280,900 gross ($4,899,400 net), inclusive of costs related to 54 additional temporary posts, supplies, equipment and services (ibid., para. 4).

17. In its resolution 55/225 of 23 December 2000, the General Assembly decided to appropriate for the Special Account for the International Tribunal for the Former Yugoslavia a total amount of $108,487,700 gross ($96,443,900 net) for 2001. In the same resolution, the Assembly also decided to revert, at its resumed fifty-fifth session, to the consideration of resource requirements for the implementation of modifications to the statute of the Tribunal, without prejudice to the nomination and election of ad litem judges.

18. The Advisory Committee was provided with a table of the revised requirements of the Tribunal for 2001, amounting to $113,768,600 gross ($101,343,300 net), inclusive of the additional resource requirements related to support for the ad litem judges (see annex).

19. The Advisory Committee has been notified that the current information on the expenditure of the International Tribunal for the Former Yugoslavia assessed fund indicates that there are resources, including the unencumbered balance in 2000 and anticipated interest income during the period 2000-2001, which would cover the additional requirements in their entirety. **Accordingly, the Committee recommends that the General Assembly take note of the Secretary-General's estimate. In this connection, the Committee has been informed that its recommendations with regard to the conditions of service of the ad litem judges will not have an impact on the estimate. The Committee further recommends that the Secretary-General be granted commitment authority in an amount not to exceed $5,280,900 gross ($4,899,400 net); such additional appropriation as would be necessary could be considered in the context of the performance report on the International Tribunal for the Former Yugoslavia to be submitted in the autumn of 2002.**

Annex

Support for ad litem judges of the International Tribunal for the Former Yugoslavia: revised requirements for 2001

Table 1

Summary of requirements by object of expenditure

(Thousands of United States dollars)

Object of expenditure	*(a) 1999 expenditure*	*(b) 2000 appropriation*	*(c) 2001 appropriation*	*(d) Additional resource requirements*	*(e) 2001 total requirements (c)+(d)*
Expenditure					
Temporary posts	41 684.5	48 129.8	45 626.9	1 161.7	46 788.6
Other staff costs	3 906.5	9 274.2	6 955.7	694.2	7 649.9
Salaries and allowances of judges	2 492.6	2 584.5	3 204.1	638.4	3 842.5
Consultants and experts	104.4	203.5	230.3	22.2	252.5
Travel	3 367.5	4 487.8	4 886.9	537.1	5 424.0
Contractual services	15 970.9	18 716.4	21 062.6	1 247.1	22 309.7
Hospitality	1.5	4.0	4.0	0.0	4.0
General operating expenses	7 399.2	8 180.4	8 427.0	229.2	8 656.2
Supplies and materials	718.3	1 038.5	1 182.2	74.8	1 257.0
Furniture and equipment	4 001.7	2 688.2	4 177.2	294.7	4 471.9
Major construction, alteration	0.0	640.5	764.2	0.0	764.2
Staff assessment	4 498.5	10 201.6	11 966.6	381.5	12 348.1
Total expenditures (gross)	**84 145.6**	**106 149.4**	**108 487.7**	**5 280.9**	**113 768.6**
Income					
Staff assessment	4 498.5	10 201.6	11 966.6	381.5	12 348.1
Other income	0.0	5.2	77.2	0.0	77.2
Total requirements (net)	**79 647.1**	**95 942.6**	**96 443.9**	**4 899.4**	**101 343.3**

Table 2
Summary of post requirements

	(a) *2000*	*(b)* *2001*	*(c)* *Additional post requirements*	*(d)* *2001 total (b)+(c)*
Professional category and above				
USG	1	1	-	1
ASG	1	1	-	1
D-2	1	1	-	1
D-1	4	4	-	4
P-5	31	32	1	33
P-4	95	103	6	109
P-3	167	182	8	190
P-2/1	120	117	7	124
Subtotal	**420**	**441**	**22**	**463**
General Service category				
Principal level	12	12	-	12
Other level	306	332	23	355
Security Service	110	129	9	138
Subtotal	**428**	**473**	**32**	**505**
Total	**848**	**914**	**54**	**968**